



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

October 8, 2002

AO-02-34

Kathleen E. Grady
35 Roseland Terrace
Longmeadow, MA 01106

Re: In-kind Contributions to a Clean Elections Participant

Dear Ms. Grady:

This letter is in response to your October 1 request for guidance regarding in-kind contributions to Clean Elections participants. Specifically, you have asked to what extent your campaign committee may receive an in-kind contribution, i.e. phone bank services conducted from a union hall, from the Democratic State Committee ("DSC").

You are a certified Clean Elections participant running for state representative in the second Hampden District. As part of a statewide effort to promote you and other Democratic candidates, the DSC intends to operate a phone bank out of a union hall in your legislative district. Based on this, you have asked the following question.

QUESTION

May a state party committee provide phone bank services to a Clean Elections participant?

ANSWER

Yes. Under the circumstances set forth below and subject to the relevant contribution limit, phone bank services provided by a state party committee to a Clean Elections participant would be an acceptable in-kind contribution.

An “in-kind contribution” is any contribution of something of value other than a monetary contribution. See M.G.L. c. 55A, § 1 and M.G.L. c. 55, § 1. Section 10(a) of the Clean Elections law states that a participant may receive in-kind contributions from only political committees and individuals. The aggregate in-kind contribution limit for participants running for legislative office for the current election cycle is \$3,200,¹ with no more than a total of \$500 in such contributions being received from any one individual or political committee and no more than a total of \$1,000 in such contributions from any one political party committee. See M.G.L. c. 55A, § 10(b) and (c).

The DSC may operate a phone bank, under the circumstances you have described, to promote your campaign and others, as long as the market value of the services, along with any other in-kind contributions by the DSC to you or your committee during the election cycle, does not exceed \$1,000. To ensure compliance with M.G.L. c. 55A, § 10(a) and other provisions of the campaign finance law, however, the DSC should not accept any in-kind contributions from other entities, such as a union, in conjunction with the phone bank because such contributions would be “earmarked” to benefit the slate of candidates to be promoted during the phone bank.

A contribution is deemed to be “earmarked” if it is given to a committee “with the intent, expectation or condition that it will subsequently be contributed to or used to support a particular candidate or candidates, or a particular committee or committees.” See AO-98-15. Earmarked contributions are prohibited because they have the effect of circumventing the campaign finance law’s contribution limits and its requirement that the true source of a contribution be accurately disclosed. See M.G.L. c. 55, §§ 6, 7, 7A & 10 and AO-98-15 (advising a state party committee that it may not focus its fundraising efforts on specific statewide offices). In the context of the Clean Elections law, such contributions may also have the effect of circumventing the requirement that candidates accept contributions only from political committees and individuals. See M.G.L. c. 55A, §§ 1, 2(a) and 10(a).

Where a union and a state party committee have coordinated efforts to establish a phone bank to promote an identified slate of candidates, it is reasonable to conclude that the union supports the candidates involved and intends to provide a benefit to their campaigns. If the union declines payment from the state party committee for the use of its facilities or equipment for the phone bank, or provides a discount for such use, it would be providing something of value to the state party committee to specifically promote those particular candidates’ election to office. Because the union intends or reasonably expects that the state party committee will use its resources to support specific candidates, the union would be making an earmarked contribution to the committee. See AO-98-15. As suggested, this would not be consistent with the requirements placed on participants under the Clean Elections law. The state party committee should therefore assume all of the costs associated with a phone bank involving a Clean Elections participant.

Accordingly, the DSC should reimburse the union for the use of its facilities at a fair market rate in order to prevent either the DSC’s receipt of an “earmarked” contribution for your committee, or the receipt, by you, of an in-kind contribution from the union. The DSC should then disclose all of the costs associated with the phone bank, including any payments to the union, on its relevant campaign finance report, and your campaign would disclose the receipt of the in-kind contribution from the DSC.

¹ Pursuant to M.G.L. c. 55A, § 13, the \$3,000 limit set forth in M.G.L. c. 55A, § 10(b) has been adjusted for inflation to \$3,200.

If you have any questions regarding this or any other campaign finance matter please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS:bp